

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20

SUTTER REGIONAL MEDICAL FOUNDATION

Employer

and

Case 20-RC-18120

OFFICE AND PROFESSIONAL EMPLOYEES  
INTERNATIONAL UNION, LOCAL 29, AFL-CIO

Petitioner

**SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION**

On March 9, 2007, I issued a Decision and Direction of Election in the instant case and the Employer subsequently filed a Request for Review. Pursuant to Sec. 102.65(e)(1) of the Board's Rules and Regulations, I have decided to treat the Request for Review as a Motion for Reconsideration of the March 9<sup>th</sup> Decision.

In my March 9 Decision, I stated as follows:

Sutter Regional Medical Foundation, the Employer, is a California non-profit corporation engaged in the business of providing support services to outpatient facilities in California. Office and Professional Employees International Union, Local 29, AFL-CIO, the Petitioner, seeks to represent the following unit of employees:

All full-time and regular part-time LVNs, Med Assts, Registration Reps, PT Aides, Radiology and Ultrasound Techs, Mtn Techs, Lab Assts, Buyers, Switchboard Operators and Clerical Employees employed by the Employer at its

facilities located at 3505, 3724 and 3903 Lone Tree Way, Antioch; 1120 2<sup>nd</sup> Street, Brentwood; 2700 Low Court, 2450 Martin Road, 1234 Empire Street and 1309 Texas Street, Fairfield; 2250 Gladstone Drive, Pittsburg; 670 Main Street, Rio Vista; 770 Mason Street, Vacaville; and 100 Hospital Drive, Vallejo, California; excluding confidential employees, professional employees, managers, guards and supervisors as defined in the Act.

There are approximately 280 employees in the bargaining unit described above. The parties stipulated that the specific facilities listed in that description should be included in the unit. No issues have been raised by the parties to this proceeding. Accordingly, I am directing an election in the unit described above, which I find to be an appropriate unit.

In its Request for Review, the Employer asserts that, while it initially stipulated to the appropriateness of this unit in a proposed election agreement, it cannot be bound to that stipulation because the Regional Director never approved the election agreement. As the parties did not stipulate to the appropriateness of the unit, the Employer argues that the Regional Director could not find the multi-facility unit to be appropriate without record evidence rebutting the appropriateness of the single-facility unit. Despite being asked numerous times by the Hearing Officer whether there were any issues the Employer wished to raise at the hearing, the Employer declined to do so. Nor did the Employer argue that the previously-stipulated to multi-facility unit was not an appropriate bargaining unit. Indeed, even in its Request for Review, the Employer does not contend that the multi-facility unit is not an appropriate unit. Rather, it takes the position that because a single-facility unit is presumptively appropriate, the Petitioner, herein also referred to as the Union, had the burden of creating a record that would establish the appropriateness of the multi-facility unit.<sup>1</sup>

---

<sup>1</sup> It is difficult to see how the Union, which only agreed to proceed to an election in a larger unit after the Employer asserted the existence of additional facilities within the Sutter Regional Medical Foundation system,

I find no merit to the Employer's argument because it fails to recognize that, as one of the units listed in Section 9(b) of the Act as appropriate for bargaining, the Board has long held that an employer-wide unit like that found appropriate here also is a presumptively appropriate unit. See *Greenhorne & O'Mara, Inc.*, 326 NLRB 514, 516 (1998), and cases cited there.

Initially, the Union sought to represent employees at only seven of the Sutter Regional Medical Foundation facilities. In the course of negotiating the election agreement, which was not approved for reasons unrelated to the scope or composition of the unit, the Employer insisted and the Union agreed to the inclusion in the unit of employees at four additional Sutter Regional Medical Foundation locations. During the March 2, 2007 hearing, which was necessitated by the Employer's refusal to sign the corrected stipulated election agreement, counsel for the Employer requested the addition of the Sutter Regional Medical Foundation facility at 3505 Lone Tree Way in order to have a complete list of the facilities involved in the proceeding. The Union agreed that the employees at the Sutter Regional Medical Foundation facility at 3505 Lone Tree Way also are the Employer's employees and it agreed to represent them as part of the unit with all of the employees at the Employer's other Sutter Regional Medical Foundation facilities. At the hearing, the Employer's counsel then stipulated that the Employer has facilities at the following locations: 100 Hospital Drive, Vallejo; 2700 Low Court, Fairfield; 1234 Empire Street, Fairfield; 1309 Texas Street, Fairfield; 2450 Martin Road, Fairfield; 770 Mason Street,

---

was to divine that the Employer was now disputing the appropriateness of the unit to which it had earlier agreed. The Employer did not put the Union or Hearing Officer on notice at the hearing that it now disputed that the larger unit was appropriate. Had the Employer's counsel articulated his position at the hearing instead of doing so for the first time in the Request for Review, the Union could have either introduced evidence regarding the appropriateness of the multi-facility unit or elected to seek separate elections in several, single-facility units. In *Bennett Industries*, 313 NLRB 1363 (1994), the Board reasoned that good faith and the importance of maintaining the integrity of its processes requires that parties state their positions at the hearing so that the Board can narrow the issues and limit its investigation to areas in dispute. I find that the Employer failed to meet that standard in this case. In any event, for the reasons discussed above, I find that the employer-wide unit now sought by the Union is presumptively appropriate.

Vacaville; 670 Main Street, Rio Vista; 3505 Lone Tree Way, Antioch; 3903 Lone Tree Way, Antioch; 3724 Lone Tree Way, Antioch; 2250 Gladstone Drive, Pittsburg; and, 1120 2<sup>nd</sup> Street, Brentwood. The Employer did not assert or offer evidence that the Sutter Regional Medical Foundation, which services the Solano and East Contra Costa County areas, includes any other facilities or that this employer-wide unit is not an appropriate unit for bargaining.<sup>2</sup>

Accordingly, as an employer-wide unit is presumptively an appropriate unit, I adhere to my March 9, 2007 Decision and Direction of Election and find that the following unit is an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time LVNs, Med Assts, Registration Reps, PT Aides, Radiology and Ultrasound Techs, Mtn Techs, Lab Assts, Buyers, Switchboard Operators and Clerical Employees employed by the Employer at its facilities located at 3505, 3724 and 3903 Lone Tree Way, Antioch; 1120 2<sup>nd</sup> Street, Brentwood; 2700 Low Court, 2450 Martin Road, 1234 Empire Street and 1309 Texas Street, Fairfield; 2250 Gladstone Drive, Pittsburg; 670 Main Street, Rio Vista; 770 Mason Street, Vacaville; and 100 Hospital Drive, Vallejo, California; excluding confidential employees, professional employees, managers, guards and supervisors as defined in the Act.<sup>3</sup>

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they

---

<sup>2</sup> The list of facilities stipulated to at the hearing is consistent with sworn evidence supplied by the Employer in connection with the unfair labor practice charge that it recently filed in Case 20-CB-12770. In that regard, I take administrative notice of Brenda Lynch's sworn March 7, 2007 affidavit testimony that she is employed by Sutter Regional Medical Foundation as the Human Resources Director for all of its facilities in Fairfield, Vacaville, Rio Vista, Pittsburg, Antioch, Brentwood, and Vallejo. I also take administrative notice that the public website for Sutter Regional Medical Foundation, through which the Employer communicates with the general public, does not list any Sutter Regional Medical Foundation location that is not included in the unit found appropriate herein.

<sup>3</sup> According to the record evidence, these facilities are not acute care hospitals; they are outpatient clinics and facilities to support the clinics.

wish to be represented for purposes of collective bargaining by **OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 29, AFL-CIO.**

The date, time and place of the election were specified in the notice of election that the Board's Regional Office issued on March 22, 2007.

**A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior*

*Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

By Decision and Direction of Election of March 9, 2007, I directed that within 7 days of that Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). To be timely filed, the list was to be received in the Regional Office on or before **March 16, 2007**.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **April 11, 2007**. The request may be filed

electronically through E-Gov on the Board's web site, [www.nlr.gov](http://www.nlr.gov),<sup>4</sup> but may not be filed by facsimile.

**DATED** at San Francisco, California, this 28<sup>th</sup> day of March 2007.

*/s/ Joseph P. Norelli*

---

Joseph P. Norelli, Regional Director  
National Labor Relations Board  
Region 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1735

---

<sup>4</sup> To file a request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the E-Gov tab. Then click on the E-Filing link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the "Accept" button. The user then completes a form with information such as the case name and number, attaches the document containing the request for review, and clicks the Submit Form button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).